

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2422 OF 2006

Mr. Vipul Rameshchandra Parekh ... Petitioner

V/s

The State of Maharashtra & ors. ... Respondents

Mr. A.H. Ponda i/by M/s. Falguni Brahmabatt for the petitioner.

Mrs. U.V. Kejariwal, A.P.P. for the respondents.

**CORAM: S.B. MHASE &
SMT. NISHITA MHATRE, JJ.**

DATED: 6TH DECEMBER, 2006.

P.C.:

1. This is a petition seeking registration of the crime on the basis of the complaints dated 13.1.2006 and 16.8.2006 committing a breach of trust in respect of the diamonds entrusted with the alleged accused amounting to Rs.32,99,922/-. The learned counsel submitted that since the complaints disclose a cognizable offence, the police officers were under obligation to register the crime. It is further submitted that the said accused is booked in the same nature of crime and the investigation is going on, however, he is not booked as an accused in the complaint which has been filed before the police

station. However, in the facts of the present case, it is not necessary to register the crime though the complaints disclose the said cognizable offence because, after the non-registration of the crime by the police officer, the complainants approached to the Magistrate by filing a crime complaint being CC No.19/I&R/2006 and the Magistrate directed that the police officer to submit a report under Section 202 of Cr.P.C. That means, the matter will be looked into and the matter will be enquired and thereafter the report will be submitted by the police and thereafter the police will take cognizance. At that point of time also, the petitioner will have opportunity to make his submissions before the Magistrate in view of the fact that the alternate appropriate remedy under the Cr.P.C. has been availed of by the petitioner - complainant by filing a complaint before the Magistrate. We do not find it necessary at this stage to give any direction to the police authorities to register a crime on the basis of the information referred to above.

2. Another prayer made by the learned counsel is that an enquiry at the hands of the police officers of the B.B. Marg Police Station will not be proper one. This allegation is also not well founded because the grievance made by the petitioner is that the earlier

complaints were not registered by them and, therefore, they will not be fair in making an enquiry under Sec. 202 of Cr.P.C. We are not in an agreement with the learned counsel. On the contrary, we have noticed from the order of the Magistrate that the petitioner is a selective in prosecuting his complaint. It is to be noted that the Magistrate has observed that the diamonds in question were entrusted to one Dharmesh and the petitioner has not impleaded said Dharmesh as an accused in the case. The jangad does not indicate that said Dharmesh accepted the diamonds on behalf of the accused Rahul and thereby the doubts have been expressed by the Magistrate while taking cognizance and, therefore, instead of directing an investigation under Section 156(3), the Magistrate called for an enquiry under Section 202 of the Cr.P.C.

3. Taking into consideration all these aspects of the matter, we do not accept the submissions made by the learned counsel for the petitioner that the enquiry be transferred to any other police officer. An apprehension of the petitioner is baseless one and, therefore, the petition deserves to be rejected. It is accordingly rejected. C.c. expedited.

(S.B. MHASE, J.)

(SMT. NISHITA MHATRE, J.)